IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 2079 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HAJI SULEMAN KUMBHAR

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 2079 of 2003

MR BB NAIK for Petitioner No. 1

Mr.V.M.Pancholi, A.P.P. for Respondent No. 1

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 10/04/2003

ORAL JUDGEMENT

Heard learned Advocate Mr. Naik for the

applicant and learned A.P.P. Mr. Pancholi for the State.

Rule. Learned A.P.P. Mr. Pancholi waives service of rule on behalf of the opponent-State.

2. This application is pressed mainly on the ground of delay in conclusion of trial. It is not in dispute that the trial has already begun and the prosecution has since May, 2002 examined, in all 11 witnesses out of 44 witnesses. The rest of the witnesses are not examined, yet it is submitted that it is almost two years since the arrest of the applicant and the trial is likely to be delayed, and therefore, on this count, in the light of several pronouncements of the Apex Court, the applicant may be granted benefit of bail. It is also submitted that the applicant himself is suffering from ill health and his wife is also not keeping well. Mr. Naik in all fairness submitted that although he cannot submit on merits, this being a successive application, the prosecution case against the applicant is that he was armed with a sword; whereas the deceased had no incise or piercing injury which is a mitigating factor which may be considered by this Court in the interest of justice. As one of the factors for delay, it has been pointed out that following the devastating aspect and destruction of jail building at Bhuj, the prisoners are now required to be kept at Rajkot prison, and as a consequence, they are required to be brought to Bhuj on the date of hearing at times, because of various administrative problems, the prosecution is not able to bring them to the Court and the case is not proceeded with.

3. Learned A.P.P. Mr. Pancholi, submitted that most of the material witnesses have been examined. He was, however, not able to state exactly as to how many of the remaining witnesses would have to be examined by the prosecution. He, however, states that prosecution will make all endeavours to conclude the trial as early as possible, provided the defence cooperates and bail application may be rejected.

4. Having regard to the contentions raised before this Court, it has to be observed that an expeditious trial is the requirement of law. Once a Sessions case is fixed for hearing, it has to be proceeded with day to day as required under the law. This is an ideal situation and all attempts are required to be made to achieve it. However, having regard to the peculiar circumstances prevailing in the District, if it is not possible to adhere to this provision verbatim, atleast the Court and

the State machinery should see to it that as far as possible, the trials are proceeded with expeditiously so that freedom of citizens is not put at stake. A long period of two years has passed ever since the accused has been arrested, and the trial, though it has begun in May, 2002, has not concluded after 11 months as on today. Neither side is able to give exact reasons for this, but it would be unreasonable to expect from the State machinery as well as the trial Court to see that the trial is concluded expeditiously. It has to be impressed upon all concerned that undertrial prisoners liberty is also important and has to be protected with utmost zeal and enthusiasm. Considering the large number of witnesses that remain to be examined (though some of them may not be necessary to be examined being formal witnesses), it would not be reasonable to expect this Court to conclude the trial as early as possible preferably by the end of June,2003. It is also expected that the prosecution and the State machinery will extend cooperation in conduct of the trial, so also, the defence. With these observations, at this stage, this application is rejected. It would be open for the applicant to move this Court, if the trial is not concluded by the end of June, 2003. Rule is discharged.

(A.L.Dave,J.)

stanley-ald.